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Torts - Contributory Negligence - Failure to Attach Seat Belts - Cierpisz v. Singleton, 230 A.2d 629 (Md. 1967)

Michael A. Brodie

of paragraph two of section 13 that the lessor furnish a general warranty deed indicated that the parties excluded a judicial sale where only a special warranty deed would be executed.[11] The court stated, "Since a right of first refusal is inserted in a lease for the benefit of the lessee, we must interpret it with that purpose in mind." [12]

The position taken by the Supreme Court of Appeals appears to be the better of the two views on the subject, since it is not based solely on the technicalities of the specific lease as are the decisions in *Draper* and *Rigby's Estate.* Since none of the leases or facts in the cases considered above are precisely the same, the conflict of authority may not be as great as it first appears.[13] The decision of the Virginia high court giving the lessee the protection he has bargained for is a just one and should be adopted as the preferred view when other jurisdictions consider this question.

Jon W. Bruce

Torts—CONTRIBUTORY NEGLIGENCE—FAILURE TO ATTACH SEAT BELTS. On July 25, 1964, the plaintiff, Singleton, a guest in an automobile driven by defendant, Cierpisz was seriously injured when the defendant collided with another automobile on a country road in Maryland. Although seat belts were installed in the automobile at the time of the accident, neither party had them fastened. Plaintiff brought an action for damages based on defendant's negligence in operating the automobile. The trial court held for the plaintiff and the defendant appealed, noting as error the trial court's failure to submit to the jury the question of plaintiff's contributory negligence in not attaching her seat belt.

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11. *Supra* note 1.

12. Cities Service Oil Company v. Estes, 208 Va. at 49; *accord,* First National Bank v. Roanoke Oil Company, 169 Va. 99, 192 S.E. 764 (1937).

13. The particular facts of the instant case might cause the Texas and Wyoming courts to reach a decision similar to that of the Supreme Court of Appeals of Virginia. The Texas court in *Draper* based its opinion on the fact that the lease permitted the right of first refusal to be used only wherever the landlord had a desire to sell. In the present case the right of first refusal clause was exercisable in the event the Landlord at any time during the term of the lease "received a bona fide offer satisfactory to it for the sale of the above described premises." The heirs of O.H. Mull were satisfied with the price the property brought at judicial and did not file a brief on appeal. The Texas court would be hard put to find that that clause of the lease was not fulfilled. Also, the fact that the heirs had accepted the price would destroy the foundation for the decision in *Rigby's Estate,* since it could be said that the heirs had set the price by asking for the sale and accepting the final bid.

The Maryland Court of Appeals[1] held it was not error to refuse to submit the question of the plaintiff's contributory negligence for failure to use the seat belt without proof that this failure caused or aggravated her injuries.[2] The Court refused to imply from the Maryland statute[3] requiring the installation of seat belts, that it was negligence per se to fail to fasten them.

Seat belt legislation is relatively new, the first statute being passed by the Wisconsin Legislature in 1961.[4] Today, twenty-three states have adopted seat belt statutes[5] with the major emphasis being on installation in passenger cars.[6] Among these statutes two approaches prevail regarding the negligence of a person in failing to attach seat belts. In three states—Minnesota,[7] Tennessee,[8] and Virginia[9]—the law specifically states that failure to use seat belts is not negligence nor can such failure be used in mitigation of personal injury or property damages. The other twenty states have left the determination of what is negligence to the courts providing no guidelines for the courts to follow.

Wisconsin, the first state to approach this problem, set the general trend of caution, which was followed by the court in *Cierpisz v. Singleton.* In *Bentzler v. Braun,*[10] the Wisconsin Supreme Court held that

1. Cierpisz v. Singleton, 230 A. 2d 629 (Md. 1967).
2. *Id.* at 635.
3. MD. ANN. CODE. art. 66½ § 296 A (1957).
   (a) Every motor vehicle registered in this State and manufactured or assembled after June 1, 1964, shall be equipped with two sets of seat belts on the front seat.
   (b) For the purpose of this section only 'motor vehicle' shall mean any vehicle intended for use as a private passenger vehicle and shall not include any motor bus, truck or taxicab.
4. WIS. STAT. ANN. § 347.48 (Supp. 1967).
5. California, Connecticut, Georgia, Illinois, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Oregon, Rhode Island, Tennessee, Vermont, Virginia, Washington, West Virginia, and Wisconsin.
6. Only two states—New York and Rhode Island—have made provisions for other types of motor vehicles; *see,* CONSOL. LAWS OF N.Y. ANN., Book 62A, § 383 (Supp. 1967) and R.I. GEN. LAWS ANN. § 31-23-41 (Supp. 1963).
7. MINN. STAT. ANN. ch. 169 § 169.685(4) (Supp. 1966).
8. TENN. CODE ANN. § 59-930(3) (Supp. 1964).
9. VA. CODE ANN. § 46.1-309.1 (b) (1950).
   Failure to use such safety belts or shoulder harnesses shall not be deemed to be negligence.
10. 34 Wis. 2d 362, 149 N.W. 2d 626 (1967); *accord,* Busick v. Budner, No. 381-602, Civil Cir. Ct. Milwaukee Ctny., Wis. (October 27, 1965); *contra,* Stockinger v. Dunisch, No. 981, Cir. Ct. Sheboygan Ctny., Wis. (October 9, 1964).

although it was not negligence per se to fail to use seat belts, nevertheless, "there is a duty, based on the common law standard of ordinary care, to use available seat belts, independent of statutory mandate. . . ." [11] However, in order for the defendant to succeed in this defense he must show not only a lack of this ordinary care, but also a causal connection between plaintiff's actions and the injuries sustained as a result of these actions.[12]

It is this problem of causation that has given the courts the most difficulty, and has led to a reluctance to act affirmatively in this field. In any collision, for example, ordinarily no one can safely say which injuries were caused by the accident, and which were caused by the failure to use seat belts. Even if it were determined that seat belts reduced accidents by a substantial percentage, it would be difficult to determine if the injuries were preventable or if they would have occurred regardless of the use of seat belts.[13] Because of this some courts have refused to pass on this issue at all, or have tried to encourage the legislatures to set the standards to be followed.[14] Yet, in most instances, the legislatures have either not proceeded far enough or have not acted at all.[15]

Even if adequate standards can be determined and a true casual connection can be found, the courts might still be hesitant to move into this field. This is due to the fact that in states having no comparative negligence statute, the slightest negligence by the plaintiff which can

11. PROSSER, TORTS 153 (3d ed., 1964)
> The standard of conduct must be an external and objective one and it must make proper allowances for the risk apparent to the actor, for his capacity to meet it and for the circumstances under which he must act. The application of (this formula) must be left to the jury or court.

12. Note, *Seat Belt and Contributory Negligence*, 12 S.D. L. REV. 130, 134 (1967); *see*, Sams v. Sams 247 S.C. 467, 148 S.E. 2d 154 (1966) (The court held that the question of negligence should be left to the determination of the jury taking into account all the facts.); Kavanagh v. Butorac 221 N.E. 2d 824 (Ind. 1966); Mortensen v. Southern Pacific Co. 53 Cal. Rptr. 851 (1967).

13. *See generally*, Kleist, *Seat Belt Defense—An Exercise in Sophistry*, 18 HASTINGS L. REV. 613 (1967); Roethe, *Seat Belt Negligence in Automobile Accidents*, 1967 WIS. L. REV. 288 (1967).

14. Brown v. Kendrick 192 So. 2d 49 (Fla. 1966); Lipscomb v. Diamiani 226 A. 2d 914 (Del. 1967) (Here the Court specifically said that the standard of care should be left to the legislature.).

15. Between 1963 and 1964 fifteen states proposed but failed to adopt seat belt statutes: Alaska, Alabama, Arkansas, Arizona, Colorado, Florida, Iowa, Kansas, Kentucky, Nevada, New Hampshire, North Dakota, Pennsylvania, South Dakota and Texas. *See*, Note, *Motor Vehicles—A Comparative Analysis of Seat Belt Legislation* 14 DE PAUL L. REV. 152 (1964).

be traced to the aggravation of his injuries, would be a bar to his recovery. This expansion of the defense of personal liability goes against the trend of decreasing the use of these defenses and increasing the basis of liability.[16] To overcome this paradox in the law it has been suggested[17] that all the states[18] adopt a comparative negligence standard so that any negligence by the plaintiff would be in mitigation and not a bar to recovery.[19]

Although the Maryland Court in *Cierpisz* did not consider this theoretical problem, it still found itself reluctant to act without adequate guidelines and standards. It did not adopt the minority's philosophy that it is not negligence to fail to wear seat belts, nor did it consider it negligence per se in not attaching them. Instead, it followed the logic of the majority in reserving the determination of negligence to a future court when the questions of degree of care and causation have been solved.

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16. *See generally*, PROSSER, *supra* note 11, at 258; James, *Imputed Negligence and Vicarious Liability: A Study of a Paradox*, 10 U. FLA. L. REV. 48 (1957); Wolfstone, *Imputation of Contributory Negligence*, 1 PERSONAL INJURY LIABILITY 241 (C.E.B. 1966).

17. New York Justice Manuel Levine made the following suggestion to the American Trial Lawyer's Association meeting on July 25, 1966 in Los Angeles, California:

> Where plaintiff's prior conduct is found to have played no part in bringing about an impact or accident, but has aggravated the ensuing damages, the better view is to reduce the plaintiff's recovery to the extent that his damages have been aggravated by his own conduct.

18. This would not change the general contributory negligence doctrine as many states today have comparative negligence provisions to cover select tort liabilities. Virginia, for example has comparative negligence with respect to railroad crossing accidents; *see*, Chesapeake & O. R. Co. v. Pulham 185 Va. 908, 41 S.E. 2d 54 (1947); Southern R. Co. v. Whitzel, 159 Va. 796, 167 S.E. 427 (1933); Norfolk & W. R. Co. v. White 158 Va. 243, 163 S.E. 530 (1931).

19. *See*, Kleist, *supra*, note 13, at 619; *contra*, Vernon v. Droesti, No. 17, 1705 Dist. Ct., Brazos Cnty., Texas (June 9, 1966) (The jury found the non-use of seat belts, together with other factors of negligence, totally precluded the plaintiff's recovery.).